the bond holders. Defendant made default in payment, and plaintiff, without any request having been made upon the trustee, sues to recover on the past due bonds. *Held,* that the common-law right to sue upon the bonds is not affected by the remedy provided in the mortgage given for their security, unless the provisions of the mortgage exclude such right in express terms or by necessary implication. *Fleming* v. *Fairmont & M. R. Co. et al.* (W. Va. 1913), 79 S. E. 826.

The argument against allowing the recovery in this action, viz., that it would prejudice the rights of the other bond-holders, cannot be sustained, for any lien that the plaintiff might acquire on the defendant's property must necessarily be secondary to the mortgage. If execution is had upon the judgment, the levy must be upon property other than that secured by the mortgage, thereby retaining to the other bond-holders an equal share in the mortgaged property, *Kimber* v. *Gunnel,* 126 Fed. 136; *Hospital* v. *Library Co.,* 189 Pa. 266. The other bond-holders not being embarrassed, there seems to be no reason why the remedy provided in the mortgage should not be held to be cumulative and not exclusive of the common-law right, *Dow* v. *Memphis, etc., R. Co.,* 124 U. S. 652; *Manning* v. *Norfolk & So. R. Co.,* 29 Fed. 839; *Wheelwright* v. *St. Louis, N. O. & O. Canal Transp. Co.,* 56 Fed. 164; *Phila. & Balt. Cent. R. Co.* v. *Johnson,* 54 Pa. 127; *Commonwealth* v. *Susquehanna, etc., R. Co.,* 122 Pa. St. 306; except where the whole scheme shows that the intention was that the bond-holders should look exclusively to the rights given in the mortgage, *Batchelder* v. *Council Grove Water Co.,* 131 N. Y. 42, 29 N. E. 801. But where the bond-holder sues to foreclose the mortgage, a different rule applies, for it would authorize an individual bond-holder to disturb the security of the other bond-holders, *Ashhurst* v. *Montour Iron Co.,* 35 Pa. St. 30; *Bowling Green Trust Co.* v. *Va. Passenger & Trust Co.,* 164 Fed. 753; *Batchelder* v. *Council Grove Water Co., supra.* But the bond-holders stand in much the same relation to the trustee as the stockholders of a corporation do to the corporation, and where it can be shown that the trustee neglects or refuses to act except on unjustifiable terms, or that he is incurably insane and the financial condition of the company is in such a condition that an immediate foreclosure is necessary to protect the interests of the bond-holders, then the individual bond-holder can foreclose for the benefit of all the bond-holders, *Owens* v. *Ohio, etc., R. Co.,* 20 Fed. 10; *Beekman* v. *Hudson River, etc., R. Co.,* 35 Fed. 3; *Consolidated Water Co.* v. *City of San Diego,* 89 Fed. 272; *Schultz* v. *Van Doren,* 65 N. J. Eq. 764; *Ettlinger* v. *Persian Rug & Carpet Co.,* 66 Hun. (N. Y.) 94; but such proof must be clear and convincing, *Beebe* v. *Richmond Light, Heat & Power Co.,* 35 N. Y. Supp. 1. The principal case, however, was not for foreclosure but merely an action at law to recover the value of the past due bonds. The decision was therefore correct.

COURTS—CONFERRING JURISDICTION BY CONSENT.—On motion of the defendant, the trial court entered an order of dismissal for want of prosecution; after adjournment, by agreement of both parties, it re-instated the

cause, and the defendant appeared at a regular term and confessed judgment in open court for the purposes of an appeal. After the case had been twice tried in the superior court and a new trial granted in each instance, the defendant moved to dismiss for want of jurisdiction, although it was conceded that the court had general jurisdiction of the subject-matter and of the parties. *Held,* that after the dismissal for want of prosecution the court, in vacation, was without power to reinstate the cause; and that the motion was properly granted. *Owens v. Cocroft* (Ga. 1914), 80 S. E. 906.

The court in the instant case seems to have made an erroneous application of the general principle that where a court has not been invested with jurisdiction of the subject-matter by law, jurisdiction cannot be conferred by consent. That this is the universal rule needs no citation of authority. On the other hand, where the court has general jurisdiction of the subject-matter but does not have control of the particular case by reason of some informality in the proceedings, such irregularity may be waived by the parties. *In re Spring St.,* 112 Pa. St. 258; *Foreman* v. *Hough,* 98 N. C. 386. Thus it has been held that a court may try an action transferred by agreement from another county, *Milner* v. *Chicago Railroad Co.,* 77 Iowa 755; that jurisdiction over a particular case can be conferred by consent where the court has general jurisdiction of that class of cases, *Greer* v. *Cagle,* 84 N. C. 385; *Tucker* v. *Sellers,* 130 Ind. 514; that consent may restore a jurisdiction which has once attached but which has been exercised so that the court's power is gone, *Brown* v. *Crow,* Hard. (Ky.) 443; *Bogle* v. *Fitzhugh,* 2 Wash. (Va.) 213. What is perhaps the true rule is stated thus in *Groves* v. *Richmond,* 56 Iowa 69, "The rule that jurisdiction cannot be conferred by consent applies only where the court has not the right to assume general jurisdiction of the subject-matter of an action. Where the court has such general jurisdiction, the parties may waive the ordinary process by which it is invoked." Such decisions as that in the instant case are what have subjected our courts to the criticism that they are dilatory and overtechnical.

COVENANTS—AFFIRMATIVE COVENANTS DO NOT RUN WITH LAND.—The Phoenix Mills was seized of a certain tract of riparian land upon which stood a mill run by water power. They were also owners of a second tract situated near the first. In 1872 they conveyed away the second tract, the deed containing a covenant that the grantors, their heirs and assigns would construct and maintain a shaft running from the mill on the first tract to the mill on the second tract to convey power. The grantor later conveyed the first tract to the defendant and the second tract was conveyed to the plaintiff. This action was brought to secure a construction of the covenants and to require defendant to construct the shaft and furnish the power. *Held,* that the covenant being an affirmative one, even though made for the benefit of the second tract, it could not be enforced in the hands of a subsequent grantee. *Miller* v. *Clary et al.* (N. Y. 1913), 103 N. E. 1114.

It is not at all certain that this decision does not change the rule on this question in New York. The court, while admitting that there was much